

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

Opinion No. 2018-UP-275 (S.C. Ct. App. Filed June 27, 2018)
(Rehearing Denied August 16, 2018)
(Appeal No. 2016-001063)

SC Court of Appeals

Ronald Jarmuth,*Petitioner,*

v.

The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc., *Respondents.*

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. WHETHER ANY “SPECIAL AND IMPORTANT REASON” EXISTS TO JUSTIFY GRANTING CERTIORARI WHERE JARMUTH SEEKS TO DISMISS CLAIMS THAT WERE ADJUDICATED IN 2012.

- II. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT’S JUNE 6, 2016 ORDER DENYING JARMUTH’S POST-APPEAL MOTION TO DISMISS.

STATEMENT OF THE CASE

The Petitioner, Ronald Jarmuth (“**Jarmuth**”), filed this Petition for Writ of Certiorari (“**Petition**”) to avoid the payment of a judgment in favor of Respondent, International Club Homeowners Association, Inc. (“**Association**”) for fines, attorneys’ fees and costs. He challenges the lower court’s denial of a 12(b)(1) Motion to Dismiss (“**12(b)(1) Motion to Dismiss**”) that was filed after the judgment was entered and affirmed on appeal in 2015.

The original actions that are the subject of the Petition, Civil Action Nos. 2009-CP-26-3596 (hereinafter “**2009 Case**”) and 2010-CP-26-11320 (hereinafter “**2010 Case**”) (hereinafter collectively referred to as “**Consolidated Cases**”), arise out of a dispute between Jarmuth and the Association regarding the Association’s governance pursuant to the Declaration of Covenants and Restrictions for the International Club filed in Deed Book 2117 at Page 1353 in the Horry County Register of Deed’s Office on February 8, 1999 (“**Declaration**”). (**R. pp. 356-451; 219-231; 335-336; 337-339**). The Association asserted counterclaims in the Consolidated Cases against Jarmuth for breach of the Declaration seeking fines and attorneys’ fees and costs. (**Id.**) The Consolidated Cases were tried by a Special Referee in August, 2012. (**R. pp. 19-66**). After the Consolidated Cases were tried, the Special Referee entered a Final Order awarding a judgment to the Association on its counterclaims in the amount of \$7,326.00 in 2012 (“**Final Order**”); the Final Order was affirmed on appeal in 2015. (**R. pp. 19-66; 69-74**).

After the remittitur was issued, Jarmuth filed his 12(b)(1) Motion to Dismiss based upon lack of subject matter jurisdiction dated March 11, 2016. (**R. pp. 291-298**). The formal order denying the 12(b)(1) Motion to Dismiss was filed on June 6, 2016

(“**June 6, 2016 Order**”). (R. pp. 77-88). Despite the fact that the Final Order has already previously been affirmed on appeal on one occasion, Jarmuth appealed the June 6, 2016 Order denying his 12(b)(1) Motion to Dismiss seeking to set aside the Final Order. (Id.). The June 6, 2016 Order was affirmed by the Court of Appeals in Unpublished Opinion No. 2018-UP-275 filed on June 27, 2018 (“**June 27, 2018 Opinion**”). Now Jarmuth is asking this Court to grant his Petition to reconsider the Court of Appeal’s June 27, 2018 Opinion affirming the lower court’s decision to deny the request to void the Final Order. This most recent Petition is another meritless attempt to avoid the judgment in the Final Order issued in 2012.

Jarmuth owns a home in the International Club Community located in Murrells Inlet, South Carolina. (R. pp. 19-66). The Association, the governing body for the International Club, was created by the Association’s Articles of Incorporation and the Declaration. (Id.). The Declaration grants the Association architectural review and enforcement rights, including the right to fine members of the Association for violation the Declaration and to seek attorneys’ fees and costs in connection with the enforcement of the Declaration.¹ (Id.).

On April 7, 2009, Jarmuth commenced Civil Action No. 2009-CP-26-3596 seeking an order that the Declaration is unenforceable and/or that the Association

¹ Section 8.9 provides that the Association is entitled to attorneys’ fees incurred in enforcing the Declaration: “[s]hould any person employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, because of a breach of the same, all costs incurred in the enforcement, including a reasonable fee for counsel shall be paid by the Owner of such Unit or Units in breach thereof.” (R. p. 124). Moreover, the Bylaws of the Association, § 13.4, echoes § 8.9 of the Declaration: “[s]hould the Developer or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys’ fees, shall be paid by the Owner.” (R. p. 130).

breached the Declaration. (**R. pp. 360-392**). The Association filed an Answer on May 13, 2009 and asserted a counterclaim for attorneys' fees and costs. (**R. pp. 185-188; 274-290**). The defense of the Association was covered under its director's and officer's insurance; the Association paid a \$2,500.00 deductible in connection with defending the 2009 Case. (**R. p. 279**).

While the 2009 Case was pending, Jarmuth filed a complaint with the South Carolina Human Affairs Commission (hereinafter "SCHAC") alleging that the Association discriminated against him in connection with the denial of his application for a swing set. (**R. pp. 198-201**). The Association filed a response and paid an additional \$2,500 deductible in defending the matter; SCHAC determined that there was no cause for Jarmuth's SCHAC complaint. (**R. pp. 202-203**). Because he was unsuccessful in the SCHAC matter, Jarmuth filed the 2010 Case in Magistrate's Court on October 12, 2010 challenging the Association's authority to enforce the architectural restrictions in the Declaration against his International Club property and the denial of his swing set and fence applications. (**R. pp. 219-231**). The Association filed an Answer to the Complaint in the 2010 Case on November 17, 2010. (**R. pp. 237-240**). Thereafter, the Magistrate's Court transferred the 2010 Case to circuit court by order dated November 30, 2010 and filed on December 1, 2010. (**R. pp. 335-336**). Upon the transfer of the 2010 Case, it was consolidated with the 2009 Case by order dated August 29, 2011 and filed September 16, 2011. (**R. pp. 337-339**).

The Association filed motions to amend the Answers in the 2009 Case and the 2010 Case to assert counterclaims against Jarmuth on August 26, 2011 (**R. pp. 419; 420-421**), and the Court granted the motions by order filed on October 11, 2011. (**R. pp.**

340-342). The Association's Amended Answers and Counterclaims in the Consolidated Cases were filed on October 24, 2011 seeking a declaratory judgment that Jarmuth is subject to the Declaration pursuant to S.C. Code Ann. 15-53-10 *et seq.* and seeking damages related to fines incurred, injunctive relief, and attorneys' fees and costs to enforce the Declaration against Jarmuth. **(R. pp. 422-433; 434-441).**

Allegations contained in the counterclaims establishing subject matter jurisdiction include the following:

- "Plaintiff's International Club property is subject, without qualification to the Declaration . . . and the HOA's Bylaws, as amended (collectively referred to as 'Governing Documents')." ¶ 2;
- "...the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at International Club ("Property")." ¶ 24;
- "The Property is located in Horry County, South Carolina, and this Court has jurisdiction over the Property and the parties to this action." ¶¶ 52-3;
- "Plaintiff is subject to the Governing Documents." ¶ 54;
- "Provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision." ¶ 55;
- "The Plaintiff, as current owner of the Property, continues to incur fines, fees, and additional related charges throughout the pendency of this case during his continued ownership of the Property." ¶ 73;
- "Plaintiff breach the terms of the Governing Documents and the Architectural Guidelines, and therefore, the Defendant HOA is entitled to a judgment in amount to be determined by this Court, together with costs and attorneys' fees incurred in bringing this action as well as an order requiring Plaintiff to comply with the Governing Documents and the Architectural Guidelines..." ¶ 75.

(R. pp. 422-433). Jarmuth admitted paragraph 53 of the Association's Answer and Counterclaim in the 2009 Case asserting that the lower court had jurisdiction. **(R. pp. 442-433, ¶ 2).**

Jarmuth and the Association agreed to refer the Consolidated Cases to Special Referee Ralph Stroman on June 15, 2012. **(R. pp. 13-15).** The consent order referred the

Consolidated Cases to the Special Referee with all power and authority to enter final judgment as provided for in Rule 53(b):

IT IS ORDERED that the above entitled actions are referred to Ralph P. Stroman who, pursuant to Rule 53(b) SCRCF, shall exercise all power and authority that a circuit judge sitting without a jury would have, including but not limited to, hearing pre-trial and post-trial motions, making findings of fact and conclusions of law, directing entry of final judgment in these actions under Rule 53(b) SCRCF, and issuing any and all Orders necessary.

(*Id.*).

The Consolidated Cases were tried from August 8, 2012 through August 10, 2012 by the Special Referee who entered the Final Order awarding the Association attorneys' fees, costs, and fines in the amount of \$7,326.00. (**R. pp. 19-66**). The Final Order included a finding that "[t]he above entitled actions were referred to the undersigned, as Special Referee, by Consent Order" and that the "referral" to Judge Stroman "is a referral with finality". (*Id.*, p. 1, ¶ 1).

After the Final Order was entered, the Special Referee recused himself from hearing the post-trial motions as a result of the Plaintiff's accusations that he was biased by order of recusal dated and filed on October 12, 2012. (**R. pp. 67-68**). As a result, the Consolidated Cases came before the circuit court pursuant to the order of recusal. (*Id.*) Jarmuth filed Post-Trial Motions seeking a new trial and to set aside the Final Order based on lack of subject matter jurisdiction on September 19, 2012. (**R. pp. 460-544; 557-683**).

After circuit court reviewed the entire record and the parties' briefs, Jarmuth's Post-Trial Motions were denied by a written order filed on March 11, 2013. (**R. pp. 343-355**). The circuit court ruled that the Special Referee had jurisdiction to enter into

the Final Order. (**R. pp. 347-348; ¶¶ 10-12**). Jarmuth timely filed an appeal of the Final Order on April 3, 2013, however, he failed to appeal the order denying the post-trial motions finding that the lower court had subject matter jurisdiction. (**R. p. 331**).

The South Carolina Court of Appeals denied Jarmuth's appeal and affirmed the Final Order in the Unpublished Opinion No. 2015-UP-111 ("**2015 Opinion**"). (**R. pp. 69-74**). Jarmuth filed a petition for Rehearing on March 12, 2015. The petition for rehearing sets forth grounds that the trial court improperly awarded the attorneys' fees to the Association in connection with the SCHAC matter.² Jarmuth's petition for rehearing was denied by the South Carolina Court of Appeals on April 24, 2015. (**R. p. 75**).

On May 12, 2015, Jarmuth filed a petition for writ for certiorari with this Court appealing the 2015 Opinion specifically asserting that the award of \$2,500.00 in attorney's fees incurred in connection with the SCHAC matter was improper. (**R. p. 76**). This Court denied Jarmuth's petition (**R. p. 76**); the remittitur was issued on January 21, 2016. Upon the issuance of the remittitur, Jarmuth filed a Rule 60(b)(2) and (3) Motion dated January 22, 2016, an amended Rule 60(b) Motion dated February 1, 2016, and the Rule 12(b)(1) Motion to Dismiss dated March 11, 2016. (**R. pp. 291-298**).

The trial court held a hearing on Jarmuth's 12(b)(1) Motion to Dismiss the counterclaims on April 27, 2016. At the hearing, Jarmuth contended that the trial court and Special Referee did not have subject matter jurisdiction to award fines, attorneys' fees, and costs for the following reasons:

- the Association failed to sufficiently plead a cause of action under Rule 8, SCRPC;

² Jarmuth also filed a Motion for Contempt and an Amended Motion for Contempt against William Freiboth, the former president of the Association, and the undersigned attorneys in the circuit court.

- the Association failed to verify the Counterclaim under Rule 9, SCRCP;
- the ARB was the only entity that had standing to bring the counterclaims;
- the Association violated Section 13.3 of the Bylaws by failing to provide Jarmuth with a hearing before the counterclaims were filed.

(R. pp. 291-298; 89-119).

After the hearing, a Form 4 Order was entered denying the 12(b)(1) Motion to Dismiss on April 27, 2016 (“**April 27, 2016 Form 4 Order**”).³ The Form 4 Order stated that, within ten (10) days, a formal order would be entered. Jarmuth filed a notice of appeal on May 17, 2016. **(R. pp. 331-332)**. Thereafter, as contemplated by the Form 4, Order, the formal June 6, 2016 Order denying Jarmuth’s 12(b)(1) Motion to Dismiss was entered. **(R. pp. 77-88)**. The June 6, 2016 Order found that the Special Referee had subject matter jurisdiction to enter in to the Final Order pursuant to the order of reference entered into by the parties. **(Id.)**. Jarmuth filed an amended notice of appeal on June 24, 2016 appealing the June 6, 2016 Order. **(R. pp. 333-334)**. The June 6, 2016 Order was affirmed by the Court of Appeals in the June 27, 2018 Opinion. Jarmuth filed a petition for rehearing and suggestion for rehearing *en banc* dated July 10, 2018. The Court of Appeals properly denied the petition for rehearing by an order filed August 16, 2018. Jarmuth filed his Petition on September 7, 2018.

ANALYSIS

I. NO SPECIAL OR IMPORTANT REASON EXISTS TO JUSTIFY GRANTING CERTIORARI.

³ The record on appeal does not include the April 27, 2016 Form 4 Order. It is included on the index, however the page referenced is the June 6, 2016 Order.

This Court should deny Jarmuth's Petition, because Jarmuth failed to identify any "special and important" reason to justify granting certiorari.

Rule 242, SCACR, provides that a writ of certiorari "is not a matter of right", but instead "will be granted only where there are special and important reasons." (emphasis added). The Rule identifies "the character of reasons which will be considered" by the Court in making its decision:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242, SCACR.

Here, the Petition presents none of the reasons identified by Rule 242, SCACR as special and important. On the contrary, this is a case of an owner attempting to avoid the payment of a valid judgment of a homeowners' association in the amount of \$7,326.00 for fines, attorneys' fees and costs. The Court of Appeals denied Jarmuth's appeal without a dissent, and the decision is consistent with the jurisprudence of this State. Furthermore, no novel, constitutional or federal issues were raised.

Petitioner posits that the June 6, 2016 Order violates his procedural rights under the 14th Amendment of the U.S. Constitution. This argument is not preserved, as the issue is being raised for the first time on appeal. See Rule 242(d)(2), SCACR; see also Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731,733 (1997). Nevertheless, the

affirmation of the June 6, 2016 Order does not violate Jarmuth's constitutional rights. It is simply an order denying a procedurally incorrect motion to dismiss that was filed after the trial of the claims, the entry of the Final Order, and the Court Appeals' affirming the Final Order. No constitutional rights are implicated, despite Jarmuth's attempts to argue otherwise.

Because Jarmuth has not raised any "special or important" reason to trigger his right to petition this Court under Rule 242, SCACR, the Petition should be denied.

II. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE LOWER COURT'S JUNE 6, 2016 ORDER DENYING JARMUTH'S POST-APPEAL MOTION TO DISMISS.

The Court of Appeals properly affirmed the June 6, 2016 Order denying Jarmuth's 12(b)(1) Motion to Dismiss.

Jarmuth asserts that the Court of Appeals' June 27, 2018 Opinion was in error for the following reasons: 1) the Court of Appeals erred in finding that Jarmuth waived his subject matter jurisdiction argument; 2) the Court of Appeals erred in finding that the lower court had subject matter jurisdiction to enter the Final Order; and 3) the Court of Appeals erred in affirming the June 6, 2016 Order, as Jarmuth only intended to appeal the April 27, 2016 Form 4 Order. These arguments are without merit for the reasons more fully set forth below.

A. The Court of Appeals did not Err in Relying on SCRCRCP Rule 12(b) in Affirming the June 6, 2016 Order.

Jarmuth asserts that the Court of Appeals erred when it cited to Rule 12(b) requiring that affirmative defenses, like subject matter jurisdiction, be asserted in a responsive pleading or motion before the responsive pleading is filed. He states in his Petition that the citation to the Rule is equivalent to a finding that Jarmuth waived his

right to object to subject matter jurisdiction and the citation constitutes an error. The Court of Appeals properly cited to Rule 12(b) in the June 27, 2018 Opinion, as Jarmuth did not raise subject matter jurisdiction as a defense in a responsive pleading or a motion in accordance with SCRCP.

Under Rule 12(b), SCRCP, “[e]very defense...to a cause of action in any pleading...shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of subject matter jurisdiction...” Rule 12(b), SCRCP. “A motion making any of these defenses shall be made before pleading if further pleading is permitted.” *Id.* Rule 7(a) provides that “[t]here shall be...a reply to a counterclaim denominated as such...”

Jarmuth raised his objection based upon subject matter jurisdiction for the first time after the Consolidated Cases were tried, the judgment in the Final Order was entered, and the Final Order was affirmed on appeal. No responsive pleading was filed by Jarmuth asserting lack of subject matter jurisdiction as a defense to the Association’s claims, nor did Jarmuth raise this defense in a motion before the filing of his reply to the counterclaim. Because Jarmuth did not assert lack of subject matter jurisdiction as a defense in accordance with SCRCP, the Court of Appeals properly relied on Rules 12(b) and 7(a) when affirming the June 6, 2016 Order.

B. The Court of Appeals did not Err in Affirming the June 6, 2016 Order Finding that the Lower Court had Subject Matter Jurisdiction.

The Court of Appeals properly affirmed June 6, 2016 Order finding that the Special Referee had jurisdiction over the counterclaims asserted in the Consolidated Cases. Jarmuth asserts that the Association failed to plead the elements of a cause of action for breach of the Declaration and for attorneys’ fees and costs; therefore the

Association did not have standing, and the Final Order is void. Jarmuth also argues that the Association's failure to hold a hearing before fines were assessed constituted a failure to exhaust administrative remedies divesting the lower court of jurisdiction to try the Association's claims. These arguments are without merit.

"Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the circuit court." BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006). The standard of review of any order ruling on Rule 60(b) "is limited to determining whether there was an abuse of discretion." Id. at 551, 633 S.E.2d at 50-03. "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." Id. at 551, 633 S.E.2d at 503.

"The definition of void under the Rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Ware v. Ware, 404 S.C. 1, 10, 743 S.E.2d 817 (2013). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002).

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which proceedings belong." Metts v. Mims, 384 S.C. 491, 498, 682 S.E.2d 813, 817 (2009); see also, Normandy Corp. v. S.C. DOT, 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2010). The circuit court shall be the general trial court with original jurisdiction in civil...cases, except those cases in which exclusive jurisdiction shall be given to the inferior courts." S.C. Const. art. V., § 11. "Courts of record within their

respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. §15-5-3-20(2005). Furthermore, “[a]ny person interested under a deed,...written contract or other writings constituting contract or whose rights, status or other legal relations are affected by a...contract...may have determined any question of construction or validity arising under the instrument...[or] contract...and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30(2005). Moreover, “[i]n any action where the parties consent,...some or all of the causes of action in a case may be referred to a...special referee by order of a circuit judge...” Rule 53(b), SCRCF. “Once referred, the...special referee shall exercise all power and authority which a circuit judge sitting without authority would have in a similar manner.” Rule 53(c), SCRCF.

The circuit court, “the general trial court with original jurisdiction in civil . . . cases”, had jurisdiction over the Association’s counterclaims for a declaratory judgment as to the rights and obligations of the parties under the Declaration and for fines, attorneys’ fees, and costs. See S.C. CONST. art. V., § 11. As pled in the counterclaims, the Association governs the International Club pursuant to the Declaration and the Bylaws for the Association. (**R. pp. 422-433; 434-441**). The counterclaims also asserted a declaratory judgment against Jarmuth that he and his International Club property are subject to the Declaration and the architectural review restrictions contained therein, because Jarmuth asserted in the 2009 Case, the SCHAC matter, and the 2010 Case that he was not subject to the Declaration. (**Id.**). The Association also sought an order of the circuit court holding that Jarmuth violated the Declaration by beginning the installation of his fence on the property line without approval of the Association’s architectural review

board. (**Id.**). These allegations established that the Court had subject matter jurisdiction to hear the Association's claims, which was admitted by Jarmuth in replying to the counterclaims. (**Id.**).

The counterclaims further sought attorneys' fees and costs in bringing the counterclaims and enforcing Declaration against him. (**Id.**). Those fees were paid in the form of two \$2,500.00 deductibles to the undersigned counsel, the attorneys retained to defend the Association in the various matters filed by Jarmuth under the Association's director's and officer's insurance policy. (**R. pp. 274-290**). The first amount was paid after the 2009 Case was filed and the second amount was paid after SCHAC matter was initiated. (**Id.**) No separate deductible was required for the 2010 Case, because it was related to the previous matters filed. (**Id.**) Testimony was presented at trial as to these facts, and the Special Referee awarded \$5,000.00 to the Association. (**Id.**). Based on the facts alleged in the counterclaims and the testimony presented at trial, the lower court did not abuse its discretion in finding that the Special Referee had subject matter jurisdiction to award fines, attorneys' fees and costs to the Association in the Final Order.

Jarmuth's argument that the Association lacked standing to bring the counterclaims under Rule 8, SCRCP, and Rule 12(b)(6), SCRCP, is without merit and lacks any legal support. The claims were sufficiently pled under the South Carolina Rules of Civil Procedure in order to confer jurisdiction on the circuit court. Rule 8 requires "(1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled." The

allegations set forth above were sufficient facts alleged in order for the circuit court to exercise jurisdiction over the counterclaims and to award the judgment for fines and attorneys' fees and costs.

Likewise, Jarmuth is grasping at straws with his "failure to exhaust administrative remedies" argument. By failing to assert this as a defense in reply to the Association's counterclaims, he waived his argument based on this defense. Nevertheless, Jarmuth's position is contrary to the plain language of the Declaration, which does not require a hearing to assess fines. Section 13.3 of the Association's Bylaws (an Exhibit to the Declaration) provides that the Association, may but is not required to, hold a hearing in the event it notices a violation of the Declaration. (**R. p. 129**). The plain language of the Declaration supports the Association's position that a hearing was not required to assess fines against him.

C. The Court of Appeals did not Err in Affirming the June 6, 2016 Order Rather than the April 27, 2016 Form 4 Order.

Finally, Jarmuth is incorrect in his position that the Court of Appeals committed reversible error in affirming the formal June 6, 2016 Order. His position is that, because he filed a notice of appeal of the April 27, 2016 Form 4 Order before the June 6, 2016 Order, the June 27, 2018 Opinion should not have addressed the formal order.

The April 27, 2016 Form 4 Order contemplated that a formal order would follow. Rule 72, SCRCF, provides that "[a]ppel may be taken, as provided by law, from any final judgment or appealable order." Under this Rule, a form 4 order that contemplates a formal order is not final and is not appealable. Therefore, an appeal was not proper until the formal June 6, 2016 Order was entered. Regardless, Jarmuth filed an amended notice of appeal on June 24, 2016 that specifically appealed the June 6, 2016 Order. (**R. pp.**

333-334). Therefore, the Court of Appeals did not commit reversible error when it affirmed the June 6, 2016 Order.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

Respectfully submitted,



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Myrtle Beach, South Carolina
Date: October 8, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

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Consolidated With
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Appeal No.: 2016-001063

Ronald Jarmuth, *Pro Se* Appellant,
v.

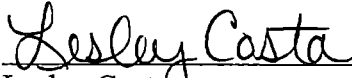
The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc., Respondents.

PROOF OF SERVICE

I, Lesley Costa, an employee of McNair Law Firm, P.A., attorneys for Respondents, The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc., in the above-entitled action, certify that I have served Respondents' Return to Appellant's Petition for Writ of Certiorari and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 8th day of October, 2018.

Addressee(s):

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The Honorable Jenny Abbott Kitchings
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RECEIVED
OCT 10 2018
SC Court of Appeals

Re: Ronald Jarmuth v. The International Club Homeowners Association,
Inc.
Case Track#: 2016-001063
Civil Action Nos.: 2009-CP-26-3596 and 2010-CP-26-11320
Our file no.: 051490.1

Dear Ms. Kitchings:

Enclosed for filing with the Court, please find the original and seven copies of Respondent's Return to Appellant's Petition for Writ of Certiorari and Proof of Service in the above matter. By copy of this letter to parties of record, and as shown on the Proof of Service, I hereby serve a copy of the aforementioned documents.

Please return to me one clocked copy of the enclosed documents in the self-addressed stamped envelope provided.

Sincerely,

McNAIR LAW FIRM, P.A.



Alicia E. Thompson

AET:lc

cc: Ronald Jarmuth
Client (via email)

Enclosures

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